

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LONNIE FICKLIN)	
Claimant)	
VS.)	
)	
POWELL ROOFING & CONSTRUCTION)	Docket No. 255,911
Respondent)	
AND)	
)	
INSURANCE COMPANY UNKNOWN)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated September 14, 2000. Claimant was awarded benefits with Dr. John Yost being named as the authorized treating physician.

ISSUES

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) Did claimant's accidental injury arise out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Appeals Board finds for preliminary hearing purposes that the Order of the Administrative Law Judge should be affirmed.

Claimant, a roofer for respondent, allegedly suffered accidental injury on April 17, 2000, while moving buckets of nails between two trucks. Those buckets of nails were described as weighing approximately 40 pounds each. Claimant testified he moved six or

seven buckets. Claimant continued working for respondent on that date, and his back continued to get worse. Claimant talked to several employees of respondent, including owner, Thomas Powell, the owner's brother, Jerry Powell, and respondent's secretary, RaeAnn Rose. Claimant advised all three that he suffered an injury on that date. However, the respondent representatives contend claimant told them his injury occurred while either getting out of a car or getting out of a pickup.

Both Jerry and Thomas Powell acknowledged claimant advised them that he suffered an injury while getting out of a co-employee's pickup. Claimant apparently rode in the pickup from respondent's office location to the job site. There, claimant supposedly either injured his back while exiting the pickup or while bending over, picking up a tool pouch before going to work.

Respondent's representative RaeAnn Rose testified that claimant told her he injured his back getting out of a car before work. Claimant and all three respondent representatives testified in the presence of the Administrative Law Judge.

Here, the Administrative Law Judge had the opportunity to view the witnesses' live testimony. This allows the Administrative Law Judge to assess the credibility of the various witnesses. Here, claimant testified that he suffered injury while moving buckets of nails. Thomas Powell acknowledged that many times buckets of nails would be loaded at the respondent's place of business and hauled to the job site in individual pickups, such as the one claimant may have rode in on the date of accident.

Claimant also testified his back symptoms worsened while he worked that day. Jerry Powell verified that claimant's back pain appeared to worsen while he was cutting wood. Thomas Powell testified that, by 11:45 that morning, claimant appeared to be having more problems.

The Administrative Law Judge, in assessing the credibility of the witnesses, found claimant's testimony to be more believable and awarded claimant benefits in the form of authorized medical treatment. The Appeals Board finds that some deference should be given to the Administrative Law Judge's decision in this instance.

In addition, the Appeals Board finds the testimony of claimant more consistent than the somewhat contradictory testimony of respondent's representatives. The Appeals Board, therefore, finds that claimant has proven, for preliminary hearing purposes, that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged and the Order of the Administrative Law Judge should be affirmed.

This order is preliminary in nature and is not binding upon the parties at the full hearing on the claim but is, instead, subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated September 14, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Edwin H. Bideau, III, Chanute, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director